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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:

Case No. 4175

12 **TOMMY MITCHELL CASTRO**
13 **4439 W. Harvard Avenue**
14 **Fresno, CA 93722**
Pharmacy Technician License

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about December 8, 2010, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for a/an Pharmacy Technician License from Tommy Mitchell
23 Castro (Respondent). On or about December 6, 2010, Tommy Mitchell Castro certified under
24 penalty of perjury to the truthfulness of all statements, answers, and representations in the
25 application. The Board denied the application on June 21, 2011.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 480 of the Code states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

....

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

5. Section 4300 of the Code states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

....

6. Section 4301 of the Code states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

....

1 (k) The conviction of more than one misdemeanor or any felony involving the use,
2 consumption, or self-administration of any dangerous drug or alcoholic beverage, or
any combination of those substances.

3 (l) The conviction of a crime substantially related to the qualifications, functions, and
4 duties of a licensee under this chapter. The record of conviction of a violation of
Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
5 regulating controlled substances or of a violation of the statutes of this state
6 regulating controlled substances or dangerous drugs shall be conclusive evidence of
unprofessional conduct. In all other cases, the record of conviction shall be conclusive
7 evidence only of the fact that the conviction occurred. The board may inquire into the
8 circumstances surrounding the commission of the crime, in order to fix the degree of
discipline or, in the case of a conviction not involving controlled substances or
9 dangerous drugs, to determine if the conviction is of an offense substantially related
to the qualifications, functions, and duties of a licensee under this chapter. A plea or
10 verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
conviction within the meaning of this provision. The board may take action when the
11 time for appeal has elapsed, or the judgment of conviction has been affirmed on
appeal or when an order granting probation is made suspending the imposition of
12 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code
allowing the person to withdraw his or her plea of guilty and to enter a plea of not
guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
or indictment.

13

14 15 **FIRST CAUSE FOR DENIAL OF APPLICATION**

16 **(Criminal Convictions)**

17 7. Respondent's application is subject to denial under section 480(a)(1), in that he was
18 convicted of the following crimes that are substantially related to the qualifications, functions or
19 duties of the profession for which he is applying:

20 a. On or about June 4, 2009, in a criminal proceeding entitled *People v. Tommy Mitchell*
21 *Castro* in Fresno County Superior Court, Case Number M08927830, Respondent was convicted
22 by plea of nolo contendere of violating Vehicle Code section 23152(b) (driving with a blood
23 alcohol content of .08% or higher), a misdemeanor. Respondent admitted the enhancement under
24 Vehicle Code section 23578 (driving with a blood alcohol content of .15% or higher, and the plea
25 contained a stipulation that Respondent's blood alcohol content was .16%.

26 b. On or about June 4, 2009, in a criminal proceeding entitled *People v. Tommy Mitchell*
27 *Castro* in Fresno County Superior Court, Case Number M09912944, Respondent was convicted
28 by plea of nolo contendere of violating Vehicle Code section 23152(b) (driving with a blood

1 alcohol content of .08% or higher), a misdemeanor. Respondent admitted the enhancement under
2 Vehicle Code section 23578 (driving with a blood alcohol content of .15% or higher, and the plea
3 contained a stipulation that Respondent's blood alcohol content was .22%.

4 c. On or about June 4, 2009, in a criminal proceeding entitled *People v. Tommy Mitchell*
5 *Castro* in Fresno County Superior Court, Case Number M09912955, Respondent was convicted
6 by plea of nolo contendere of violating Vehicle Code section 23152(b) (driving with a blood
7 alcohol content of .08% or higher), a misdemeanor. Respondent admitted the enhancement of a
8 prior conviction of Vehicle Code section 23152(b), and the plea contained a stipulation that
9 Respondent's blood alcohol content was .14.

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(Act that if Done by Licentiate Would be Grounds for Suspension or Revocation)**

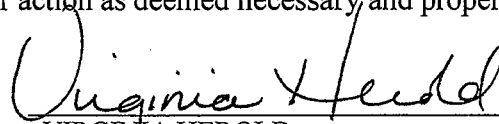
12 8. Respondent's application is subject to denial under section 480(a)(3), in that he
13 committed acts that if done by a licentiate would be grounds for suspension or revocation, under
14 Code section 4301 subdivisions (k) and (l), as set forth more fully in paragraph 7, above.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Pharmacy issue a decision:

- 18 1. Denying the application of Tommy Mitchell Castro for a Pharmacy Technician
19 License;
20 2. Taking such other and further action as deemed necessary and proper.

21 DATED: 11/1/11



22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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